

1 THE HONORABLE RICARDO S. MARTINEZ
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7 UNITED STATES DISTRICT COURT
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WESTERN DISTRICT OF WASHINGTON AT SEATTLE

REYNALDO D. VINLUAN, an individual,

Plaintiff

v.

FIDELITY NATIONAL TITLE AND
10 ESCROW COMPANY, a Washington
Corporation; UNITED PACIFIC MORTGAGE,
d/b/a AVENTUS, INC., a Washington
Corporation; SAXON MORTGAGE SERVICE,
11 INC., a Texas Corporation; OCWEN LOAN
SERVICING, a Florida Corporation;
DEUTSCHE BANK NATIONAL TRUST
12 COMPANY AS TRUSTEE FOR
REGISTERED HOLDERS OF MORGAN
13 STANLEY ABS CAPITAL I INC. TRUST
2007-NC3 MORTGAGE PASS-THROUGH
CERTIFICATES SERIES 2007-NC-3, a
14 Delaware Corporation; REGIONAL TRUSTEE
SERVICE CORPORATION, a Washington
Corporation; and MORTGAGE ELECTRONIC
15 REGISTRATION SYSTEMS, INC., a
Delaware Corporation,

Defendants.

NO. 2:10-cv-01289-RSM

NOTICE OF MOTION AND MOTION FOR
REMAND

NOTE ON MOTION CALANDER:
September 3, 2010

TO: THE HONORABLE RICARDO S. MARTINEZ, U.S. District Court Judge; and

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

I. NOTICE OF HEARING

PLEASE TAKE NOTICE that on September 3, 2010, or as soon thereafter as the matter may be
heard, in the Courtroom of the Honorable Ricardo S. Martinez, United States District Court Judge, 700

NOTICE OF MOTION AND MOTION FOR REMAND

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RICHARD LLEWELYN JONES, P.S.

ATTORNEY AT LAW
2050 - 112th Avenue N.E.
Suite 230
Bellevue, Washington 98004
(425) 462-7322

1 Stewart St., Seattle, WA 98101, the Plaintiff in the above captioned proceeding will and hereby does
2 move the Court for an order remanding these proceedings to the King County Washington Superior
3 Court, from which these proceedings were removed on or about August 16, 2010.

4 **II. MOTION**

5 **COMES NOW** the Plaintiff, REYNALDO D. VINLUAN, by and through his attorney,
6 RICHARD LLEWELYN JONES, P.S., and moves the Court for an order remanding these proceedings to
7 the King County Washington Superior Court, from which these proceedings were removed on or about
August 16, 2010.

8 **III. STATEMENT OF FACTS**

9 3.1 Plaintiff executed a Deed of Trust recorded on December 14, 2006, with
10 Defendant Fidelity as trustee, naming MERS as purported beneficiary; the lender was identified
11 as United Pacific. This instrument was recorded in King County under Recordation No.
12 20061214002367, encumbering the Property.

13 3.2 As of December 14, 2006, and subsequently at all times thereafter, the Plaintiff
14 owed to MERS no monetary or other obligation under the terms of any promissory note or other
15 evidence of debt executed contemporaneously with the deed of trust referenced in paragraph 3.1.

16 3.3 On May 13, 2009, a Plaintiff sent to Saxon a Request for Modification of Loan
17 by U.S. certified mail.

18 3.4 On June 24, 2009, Saxon sent to Plaintiff a letter regarding recalculation of
19 Plaintiff's Note.

20 3.5 On July 2, 2009, Saxon sent to Plaintiff a letter informing him that foreclosure
21 process has been initiated.

22 3.6 On July 7, 2009, Defendant Regional Trustee Services Corporation, as "trustee
and/or agent for the beneficiary," executed a Notice of Default.

3.7 On July 7, 2009, Defendant MERS executed, as beneficiary of the security instrument referenced in paragraph 3.1, an Appointment of Successor Trustee nominating Defendant Regional Trustee as trustee. This instrument was recorded in King County under Recordation No. 20090821002454 on August 21, 2009.

3.8 On August 20, 2009, Defendant Regional Trustee executed a Notice of Trustee's Sale in connection with the Property. This instrument was recorded in King County under Recording Number 20090821002455 on June 1, 2010.

3.9 On November 24, 2009, Defendant Regional Trustee executed a Discontinuance of Trustee's Sale in connection with the Property. This instrument was recorded in King County under Recording Number 20091201000902.

3.10 Defendant MERS executed an Assignment of Deed of Trust, under which Defendant Deutsche is the deed of trust assignee. Under this instrument, the purported date of the assignment of deed of trust is November 16, 2009, however, the instrument is notarized on April 5, 2010. This instrument was recorded in King County under Recording Number 20100421000723 and recorded on April 21, 2010.

Suit Filed and Related Post Filing Acts

3.11 On July 29, 2010, the above-captioned matter was filed in King County Superior Court under King County Superior Court Cause No. 10-2-27688-2 SEA. Plaintiff's Complaint raised predominately issues of State law, including action for quiet title, wrongful foreclosure, defamation of title, malicious prosecution and violation of the Washington State Consumer Protection Act, *RCW 19.86, et seq.* As a basis for alleging a *per se* violation of the Washington State Consumer Protection Act, *RCW 19.86*, Plaintiff raised a claim for violation of the Fair Debt Collection Practices Act, *15 USC 1962, et seq.* A true and correct copy of Plaintiff's Summons and Complaint is attached to Defendant's Notice of Removal, on file herein.

3.12. On August 11, 2010, counsel for Fidelity National Title and Escrow Company (“Fidelity”) filed a Notice of Removal.

3.13 On August 17, 2010, Plaintiff filed an Amended Complaint, which does not include any claim of right arising under the laws of the United States.

3.14 As of August 17, 2010, no defendants have appeared or answered.

IV. STATEMENT OF ISSUES

4.1 Does this Court have jurisdiction and venue when the Amended Complaint raises no federal claims or rights?

V. STATEMENT OF LAW AND ANALYSIS

Pursuant to the provisions of 28 U.S.C. § 1441(b), an action may be removed to federal court if it is a civil action founded on a claim or right arising under the laws of the United States. Based on the Amended Complaint, a federal claim or right no longer exists in this action. Amendment of the Complaint without the other parties consent or leave of court was timely under *FRCP 15(a)(1)(B)*, as it was filed within 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f). There have been no responsive pleadings filed in this case.

VI. RELIEF

For the reasons stated hereinabove, it is respectfully submitted that the Court should remand this action to the King County Superior Court.

The Amended Complaint is not founded on any claim or right arising under federal law. Accordingly, remand is required.

RESPECTFULLY SUBMITTED this 17th day of August 2010.

RICHARD LLEWELYN JONES, P.S.

Richard Llewelyn Jones, WSBA # 12904
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury of the laws of the State of Washington that on this 18th day of August 2010, I caused to be delivered a copy of the foregoing **NOTICE OF MOTION AND MOTION FOR REMAND** to the following in the manner indicated:

Matthew R.Cleverley Fidelity National Law Group 1200 – 6 th Ave., Suite 1900 Seattle, WA 98101	<input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger/Processor <input checked="" type="checkbox"/> By ECF <input type="checkbox"/> By Facsimile
	<input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger/Processor <input type="checkbox"/> By ECF <input type="checkbox"/> By Facsimile
	<input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger/Processor <input type="checkbox"/> By ECF <input type="checkbox"/> By Facsimile

Signed this 18th day of August, 2010 at Bellevue, Washington.



Susan L. Rodriguez